IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1798 of 1988

Date of Decision: 25-11-2004

SHANABHAI JODHIYABHAI PATELIA
Versus
ISMAIL NANA SHAIKH

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting?

For the appellant:

MR SK BU

Respondent served

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal is directed against the judgment of Motor Accident Claims Tribunal (Main) Vadodara in Motor Accident Claims Petition No.369 of 1984 dated 12-10-1987.

2. The appellant was cleaner in Truck No.GTG 3480.

Whether Reporters of Local Papers may be allowed to see the Judgment?

On 12-11-1983, he was run over by the Truck when the Truck moved though the claimant was in the process of getting into the same, despite warning to the driver not to move the vehicle till he got into it. As a result of this accident, he suffered serious injuries, therefore, shifted to the hospital at Bariya and thereafter to Civil Hospital, Godhra. The claimant alleges that the accident took place due to rash and negligent driving of the truck by the driver, otherwise, the accident could be avoided. The opponent (driver) has not filed reply, while opponent no.2 (Insurance Company) denies the allegations regarding age, nature of work, income, injuries, treatment and other disabilities. That apart, it is denied that the Truck was involved in the accident. On the pleadings of the parties, Claims Tribunal held that accident took place as alleged, claimant suffered injuries due to the accident, having taken place on account of rash and negligent driving of the vehicle by its driver, and against the claim of Rs.2,00,000/-, compensation of Rs.1,20,925/- was awarded with interest @ 12% from the date of application till payment. Claimant, not satisfied with this award, challenged the same through this Appeal.

3. Heard the learned counsel for the appellant. None present for the respondents, though served. There is no doubt about occurrence of accident as alleged. The claimant got out to see the condition of the road, being kachha, and while in the process of boarding the truck, driver moved it despite warning, resulting in claimant coming underneath the tyres of the truck causing serious injuries, like fracture of both the inferior public rami, fracture of right liliac bone, extra paritoneal rupture of bladder. The claimant also suffered disabilities like pain on the right hip, groin and pubic symphasis region, terminal 15 degrees movement of the right hip joint, restricted rotations, difficulties in sitting cross-legged and squatting, standing for a longer time and walking longer distance, limping on the right leg because of pain on the right hip joint, old healed scar on the abdominal and the thigh region right side. He had also the disability of incontinence (dribbling) of urine by day and night and difficulty in the erection of penis. With all these injuries suffered and disabilities incurred, claimant will not be in a position to function as before. His body is shaken and disabilities affected his functioning. He may be impotent completely or partially, unable to enjoy family life. Medical experts

have given a comprehensive account of injuries, disabilities, period of treatment in their statements. The duration of treatment in various hospitals is 215 days, apart from treatment taken from home. With this background, the award of compensation under various heads by the Claims Tribunal seems to be thoroughly unjust.

Consequently, in the facts and circumstances of the case, it would be just and proper to award a lumpsum amount of Rs.2,00,000/- to the claimant. The Appeal is allowed. The claimant shall be entitled to further compensation of Rs. 79,075/- (Rs.2,00,000-1,20,925) with interest @ 12% from the date of application till payment. The award shall stand modified to the aforesaid extent. The Insurance Company is directed to pay the compensation within a month.

There shall be no order as to costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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